

City Council Introduction: **Monday**, June 25, 2001
Public Hearing: **Monday**, July 2, 2001, at **1:30 p.m.**

Bill No. 01-105

FACTSHEET

TITLE: **STREET VACATION NO. 01009**, requested by Donald W. and Linda L. Spilker, to vacate North 11th Street between Fletcher Avenue and Interstate 80.

STAFF RECOMMENDATION: **Denial.**

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 6/13/01
Administrative Action: 6/31/01

RECOMMENDATION: **Denial** (6-0: Newman, Duvall, Carlson, Krieser, Taylor and Schwinn voting 'yes'; Bayer, Hunter and Steward absent).

FINDINGS OF FACT:

1. The Planning staff recommendation to **deny** this street vacation request is based upon the "Analysis" as set forth on p.2-3, concluding that this area has high potential for development in the near future and the street should not be vacated until replatting. Removing this half street may allow the addition to the building by the applicant but creates lots without frontage.
2. The applicant's testimony is found on p.5 and 6.
3. Testimony in opposition is found on p.5.
4. Questions posed to staff by the Planning Commission are found on p.6.
5. A motion to approve the street vacation failed 2-4: Duvall and Schwinn voting 'yes'; Newman, Carlson, Krieser and Taylor voting 'no' (See Minutes, p.6-7).
6. The Planning Commission then voted 6-0 to agree with the staff recommendation of **denial**.
7. This proposed street vacation will also have public hearing and action by the Lancaster County Board of Commissioners.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: June 18, 2001

REVIEWED BY: _____

DATE: June 18, 2001

REFERENCE NUMBER: FS\CC\FSV01009

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: S.A.V. #01009

DATE: May 30, 2001

PROPOSAL: Petition to vacate N. 11th Street between Fletcher Ave. and I - 80.

GENERAL INFORMATION:

APPLICANT: Donald W. and Linda L. Spilker
1201 Fletcher Ave
Lincoln, NE 68521
(402) - 477 - 0387 or 430 - 0706

CONTACT: Same

LOCATION: All the right-of-way of North 11th Street between Fletcher Ave and I - 80.

REQUESTED ACTION: Approval of the vacation.

LEGAL DESCRIPTION: All the right-of-way of North 11th Street, adjacent to Lot 26 I.T., between Fletcher Ave. and I - 80, located in the North ½ of Section 2, Township 10 North, Range 6 East of the 6th P.M..

EXISTING ZONING: AG, Agriculture.

SIZE: The ROW is 0.75 acres in area, 30' x 1101'.

LAND USE: The ROW is unopened and in grass and trees.

SURROUNDING LAND USE AND ZONING: The land immediately surrounding the proposed vacation is zoned AG Agriculture and is used for single family acreage dwellings. The abutting property on the east is a Christmas tree farm.

HISTORY: Changed from AA Rural and Public use to AG Agriculture in the 1979 Zoning Update.

ANALYSIS:

1. This is a request to the County to vacate the street ROW of 11th Street from Fletcher Blvd to Interstate 80.
2. The abutting property owner at the east, Donald and Linda Spilker, petitioned for the vacation.

3. This is currently a half county road right-of-way that does not appear to have ever been opened. The applicant states the strip was created in 1888.
4. The Comprehensive Plan does not show this as a major street. N 1st Street to the west is a principal arterial. N. 14th Street to the east is a Minor Arterial and is shown as a Public Way Corridor. The bridges over I-80 at North 1st and 14th are under review as to future configuration and location in conjunction with the reconstruction of I - 80. This area is shown in the Future Service Limit and is designated for Urban Residential.
5. There is an existing power line in the right-of-way.
6. The Public Works and Utilities Department reviewed this proposal and notes no objection.
7. The County Engineer has not responded at the time of this writing.
8. The applicants indicate they wish to expand the existing steel building that was built in 1991. Removal of the street will change the setback from a front yard of 50' to a side yard of 60' but will also move the lot line by 30' if added to this lot. The County Engineer Office determines the disposition of the parcel and how, and if, it is split between the abutting owners.
9. The lots to the west of this street are shown as ownership "tied" parcels that have frontage and access to other streets. This vacation creates lots without frontage and access (i.e, Lot 6 or Lot 7).
10. The Subdivision regulations require a maximum block length of 1320' in order to allow cross connections between areas of development. This will create a block face of one mile without cross streets. However, later urban development will be required to provide cross streets during platting.
11. This is the only through north-south street at this time between N. 1st and N. 14th Streets.
12. As the city grows to the north, well planned development will provide appropriate streets.
13. This is a County Road in the City three mile jurisdiction and will require approval by both the City Council and the County Board.

CONCLUSION:

This area has high potential for development in the near future and the street should not be vacated until replatting. Removing this half street may allow the addition to the building by the applicant but creates lots without frontage.

STAFF RECOMMENDATION:

Denial of the Vacation.

If, after public hearing, the Planning Commission votes to approve this request, the following conditions are suggested by staff.

Conditions:

1. Provide the required easement for existing LES and other utility lines.

Prepared by:

Michael V. DeKalb, AICP
Planner

STREET & ALLEY VACATION NO. 01009

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 13, 2001

Members present: Newman, Duvall, Carlson, Krieser, Taylor and Schwinn; Bayer, Hunter and Steward absent.

Planning staff recommendation: Denial.

Proponents

1. Donald Spilker, 1201 Fletcher Avenue, testified in support of the proposed vacation of this county right-of-way. He owns Lot 26 which borders Fletcher on the north, 14th Street on the east and I-80 on the south, and abuts on the west side of the 30' strip of right-of-way that is approximately 1100 feet long, or a total area of about 27.5 acres. All of the land surrounding the proposed vacation is zoned AG and used as single family acreage dwellings. Lot 26 is approximately 20 acres in size, all used as a Christmas Tree farm, along with a 40' x 60' building used as a service shop, for storage of equipment and as a sales building for the Christmas Tree operation. The property is also his home.

Spilker is seeking this street vacation because he needs more room to accommodate the Christmas Tree customers in November and December of each year. Being able to purchase the additional 30' of right-of-way would allow him to add onto his building on the west side. This 30' strip was set aside in approximately 1888. Maybe at that time they were thinking that some day there would be a road running north to south, but when I-80 was put through this section, it left this 30' strip of right-of-way on the north side of I-80 with nowhere to go. A few years ago there was 600' to the west of this 30' strip that was vacated because it dead-ended into I-80 and would never be developed into single family lots.

Spilker urged that it makes sense to get surplus property back on the tax rolls after this many years where it can be incorporated in with another property that can make use of it. There is not a property owner interested in paying to have a street built when it will serve no purpose. LES and the phone company now use the property to service their equipment along this right-of-way and Spilker would have no problems giving easements for their continued use. The through streets in this area now are 7th Street and 14th Street, and they have bridges that cross over I-80. All of the acreage owners are serviced from either 7th or Fletcher.

Opposition

1. Craig Carlson, 1001 Fletcher, the property owner on the west side of this road, testified that he is a little naive or uneducated about the ramifications of this street vacation. All he can see now is that it potentially would interfere with future development. He is not necessarily in favor or in opposition because he does not know all the potential ramifications. However, at this point in time, he stated that he is opposed, but he would like to know more about the codes and the future city plans, etc.

Staff questions

Carlson noted that the staff report indicates high potential for redevelopment in the near future. Mike DeKalb of Planning staff noted that the city limits are just to the south with development to the west and to the east that is currently underway. It is in the future urban area and there is a high opportunity for development to occur in the future.

Carlson asked the advantage of having dedicated right-of-way if someone wanted to replat to single family homes or smaller urban type lots. DeKalb's response was that currently, there is 30' of existing road right-of-way. A road to the west of this area was vacated. That was fine because all of the parcels that remained had frontage or access to Fletcher or 7th. The scenario here is 30' of right-of-way that could be used under replatting, but by vacating it the lots that abut that street on the west have no access. It creates landlocked parcels. The staff's recommendation is based upon the combination of creating landlocked parcels and losing the opportunity to either build on this road or vacate it at the time of replatting to figure out the appropriate configuration.

Schwinn noted that we have already given up half of this right-of-way. DeKalb believes it was just a half street to begin with. There is no road directly to the north—there is existing right-of-way but no road.

Response by the applicant

Spilker contended that the area will never be developed into individual lots because the length of the ground involved is not long enough to justify the cost of any developer or any landowner wanting to pay for a street or put in the utilities. Everyone that lives out there is an acreage owner and it is going to remain acreages. He is not in favor of creating a roadway and paying for streets and utility costs. Everybody is serviced either off of 7th or Fletcher. If 11th Street were to run through to the north, it would run right into a house. 11th Street will never go north.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 13, 2001

Duvall moved to approve the street vacation, seconded by Schwinn.

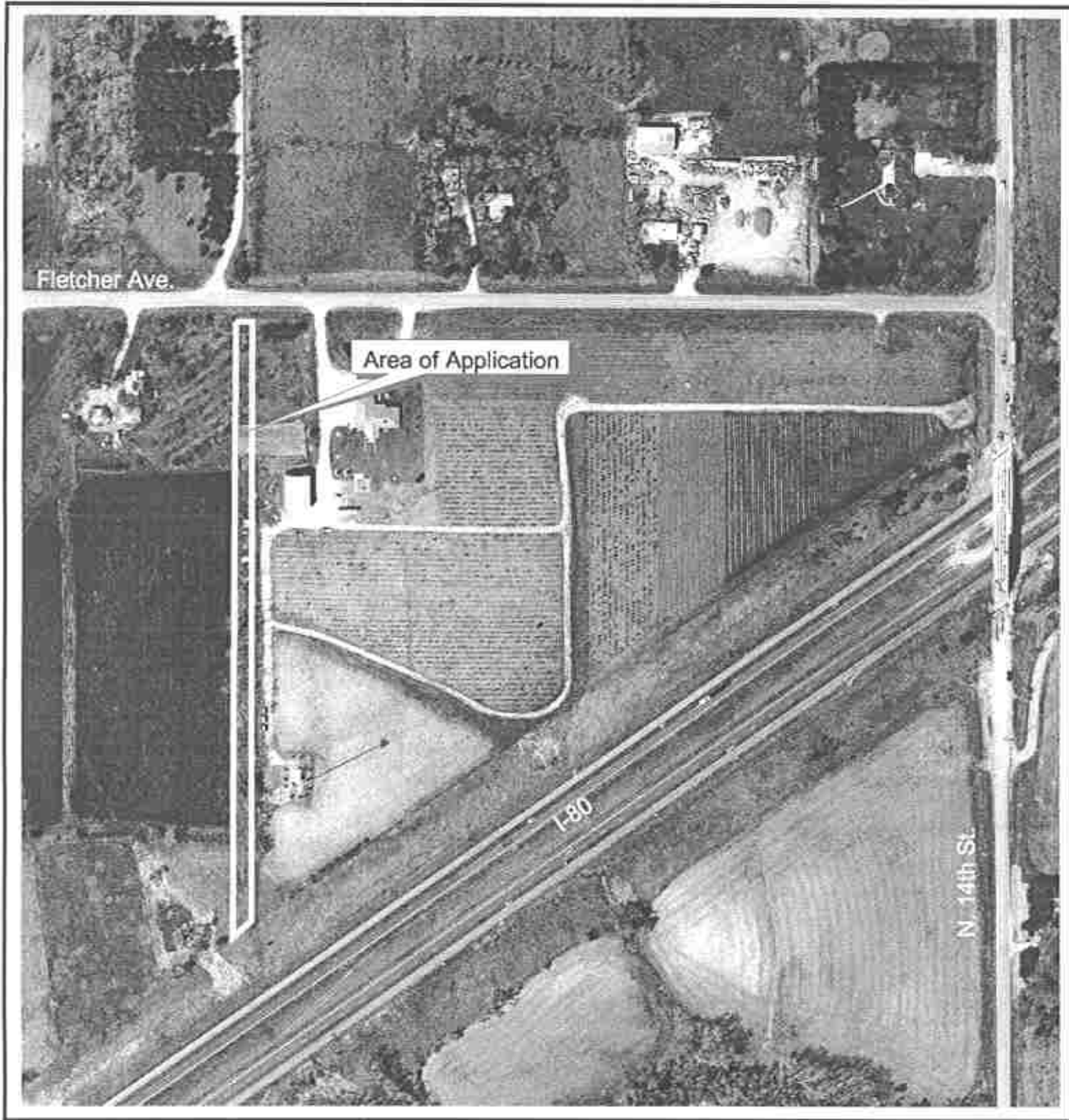
Duvall has mixed feelings but he thinks the attempts of development will probably not happen. Schwinn agreed. Any development that does occur will not occur on that specific point. He believes it would develop as a community unit plan with new roadways. He does not see that it is a significant parcel for the county.

Carlson agreed with the potential future but he wonders about the ability to swap out right-of-way for right-of-way. Looks to him that there may have been a mistake on the earlier vacation. Maybe this one should have been vacated instead. He stated that he will err on the side of caution.

Newman agreed with Carlson. She does believe it will be developed and it might be a mistake to vacate this road.

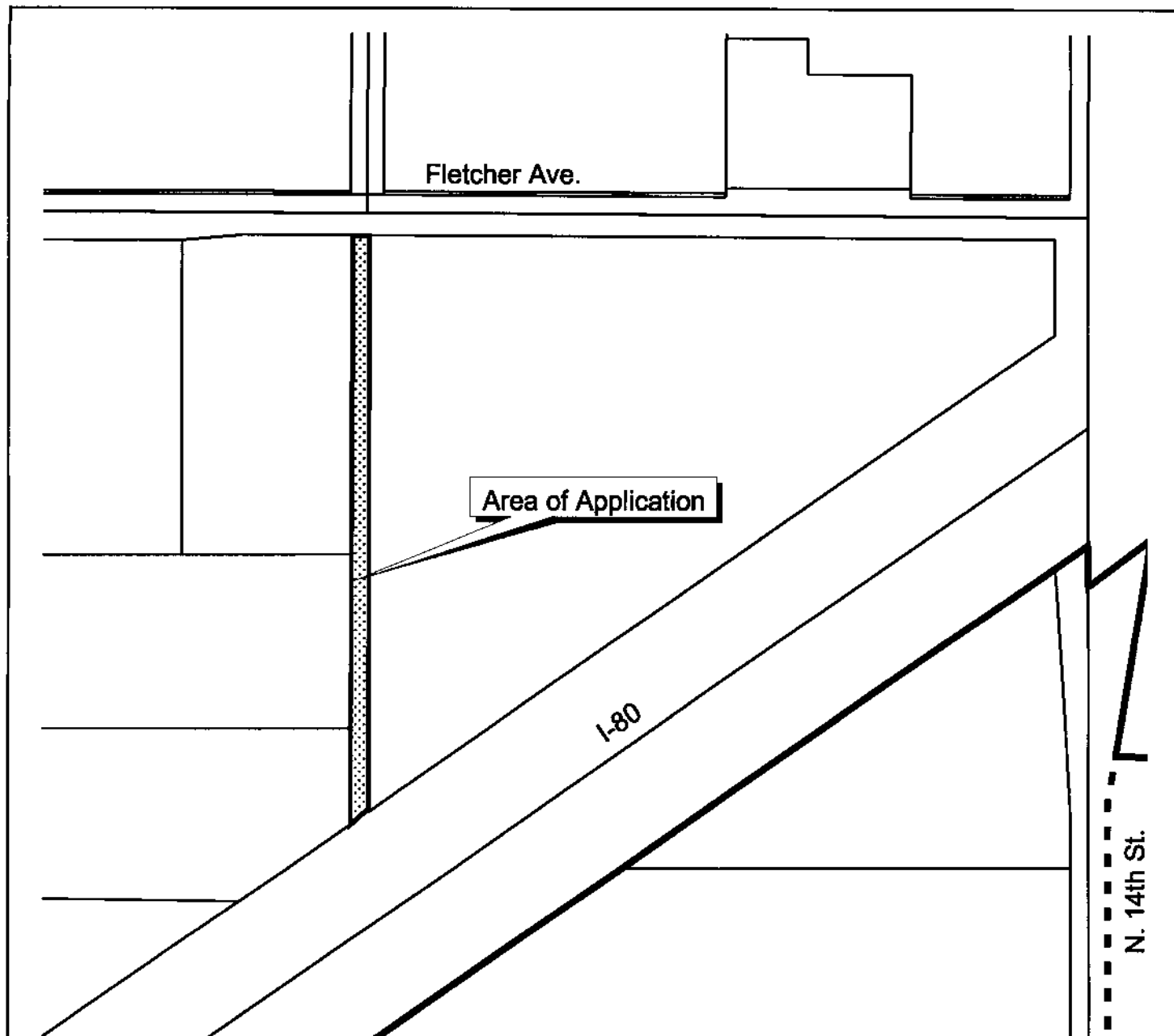
Motion for approval failed 2-4: Duvall and Schwinn voting 'yes'; Newman, Carlson, Krieser and Taylor voting 'no'; Bayer, Hunter and Steward absent.

Carlson moved to deny, seconded by Newman and carried 6-0: Newman, Duvall, Carlson, Krieser, Taylor and Schwinn voting 'yes'; Hunter, Bayer and Steward absent.



Street & Alley Vacation #01009
N 11th & Fletcher Ave.



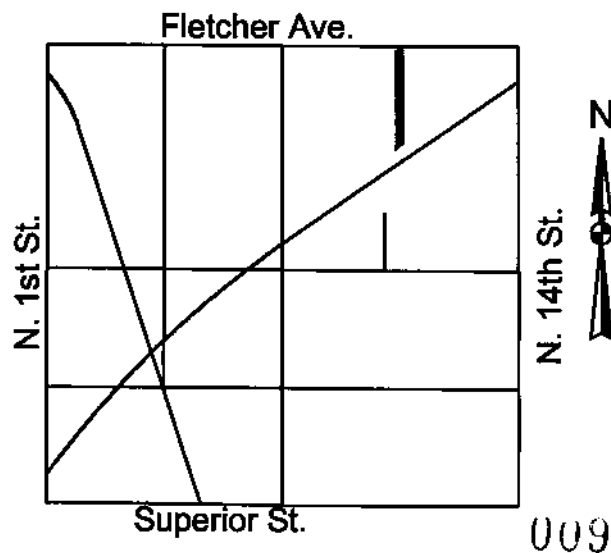
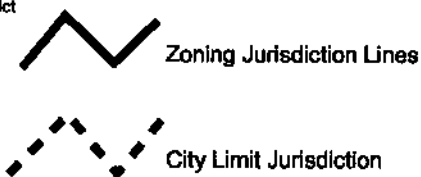


Street & Alley Vacation #01009 N 11th & Fletcher Ave.

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 2 T10N R6E

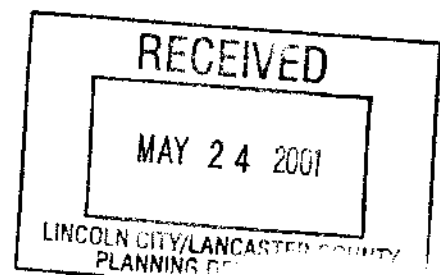


To: Ray Hill - Planning - *MIKE D.*
From: Byron Blum - Public Works *BB*
Subject: Right-of-Way Vacation at 14th & Fletcher
Date: May 23, 2001
cc: Dennis Bartels
Roger Figard
Nicole Fleck-Tooze

I have reviewed the area of the proposed vacation. There are no City of Lincoln utilities in this corridor. This review does not include natural gas, electric, phone, cable, fiber optics lines or any other utility outside the Public Works Department responsibilities.

Public Works has no objections to this vacation.

jaj 14thFletcherROWVac blb



FLETCHER

-AVE

C-16

INTERSTATE H
NO. 80

STREET

STREET

GROVE

REM. PORT.
LOT 26 I.T.

LOT 25 LT.

LOT 24 I.T.

1	30	43.5
2	36	41.5
3	37	40.5
4	38	39.5
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422	456	-378.5
423	457	-379.5
424	458	-380.5

△
N

011

Lancaster County Clerk

COUNTY-CITY BUILDING
555 SOUTH 10TH STREET
LINCOLN, NE 68508-2803

(402) 441-7481
FAX (402) 441-8728



BRUCE MEDCALF
CLERK

GWEN THORPE
DEPUTY CLERK

May 16, 2001

Don Thomas
County Engineer
444 Cherry Creek Road
Lincoln, NE 68528

Dear Don:

The Lancaster County Board of Commissioners took the following action at their regular meeting on Tuesday, May 15, 2001:

Moved by Heier and seconded by Steinman to approve Resolution 01-33 directing the County Engineer to conduct a study regarding vacation a portion of a County road located on North 11th Street between Fletcher Avenue and Interstate 80 in Lancaster County, Nebraska (R-01-33). On call Campbell, Steinman, Workman, Hudkins and Heier voted aye. Motion carried.

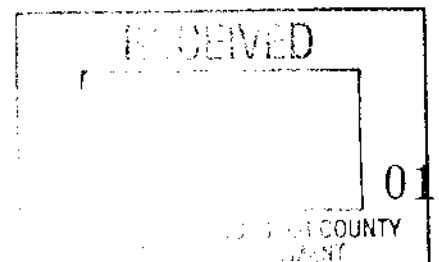
Respectfully,

A handwritten signature in black ink, reading "Bruce Medcalf", is written over the typed name.

Bruce Medcalf
County Clerk

xc: Jean Walker, Planning

If you would like to see any additional testimony regarding this item, please contact the County Clerk's Office for a copy of the minutes.



FILED

MAY 10 2001

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

LANCASTER COUNTY CLERK

DIRECTING THE COUNTY ENGINEER)
TO CONDUCT A STUDY REGARDING)
VACATING A PORTION OF COUNTY)
ROAD LOCATED ON NORTH 11TH STREET)
BETWEEN FLETCHER AVENUE AND)
INTERSTATE 80, LANCASTER COUNTY)

RESOLUTION NO. R-01-33

WHEREAS, the Board of County Commissioners of Lancaster County, Nebraska, ("the Board"), pursuant to Neb. Rev. Stat. §39-1722 (Reissue 1998), when it deems the public interest may require vacation or abandonment of a public road of the County, may direct the person responsible for maintenance of the public roads in Lancaster County to conduct a study regarding the use being made of such public road and to submit in writing to the Board within thirty days, a written report upon the study made and their recommendation as to the vacation thereof; and

WHEREAS, the Board received verbal information from the County Engineer's Office and written information, marked as Attachment "A", attached hereto and incorporated by this reference, that the public interest will be served by vacating a portion of county road located on North 11th Street between Fletcher Avenue and Interstate 80, Lancaster County, Nebraska; and

WHEREAS, the Lancaster County Engineer is the person responsible for the maintenance of county roads in Lancaster County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Lancaster County, Nebraska, that the Lancaster County Engineer, or such person designate by the Engineer, shall conduct a study of the use being made of the above-described portion of county road, and to submit in writing to the Board within thirty days, a report upon the study made and their recommendation as to the vacation thereof; and

BE IT FURTHER RESOLVED, that in accordance with the provisions of Resolution No. 3049, a copy of this Resolution shall be served upon the Lincoln/Lancaster County Planning Department, which shall report in writing within thirty days, unless a longer period is granted by the Board, as to the character and degree of conformity or nonconformity of the proposed vacation to the Comprehensive Plan.

DATED this 15 day of May, 2001, at the City County Building, Lincoln, Lancaster County, Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

Linda Steinman
Bernice Allen
Bob Workman
James Hudkins
Kathy Campbell

APPROVED AS TO FORM
this 16th day of
May, 2001.

David W. Johnson
for GARY E. LACEY
County Attorney

MAY 1 2001

PETITION FOR VACATION OF PUBLIC ROAD

LANCASTER COUNTY CLERK

The undersigned registered voters of Lancaster County, Nebraska reside within ten (10) miles of a segment of public road right-of-way described as:

A full 30 ft. wide strip of land, lying right on the West side of Lot 26. Running approximately 1101 ft. long from North to South, from Fletcher Ave. to Interstate 80 (approximately 3/4 Acre)

a map of which is attached hereto, hereby petition the County Board of Lancaster County to vacate said segment of public road for the reason that: This 30' strip was created in 1888, has never been used, and can go no-where. It fully lies along lot 26 which is owned by myself. All my property is used for agriculture use. Need additional footage to meet set-back requirement to enlarge present steel building on lot 26.

And further request that a time and date be set for a public hearing before the County Board on this matter.

NAME

ADDRESS

- | | |
|-----------------------------|--------------------------------------|
| 1. <u>DONALD W. SPIJKER</u> | <u>1201 FLETCHER AVE LINCOLN NE</u> |
| 2. <u>LINDA L. SPIJKER</u> | <u>1201 FLETCHER AVE LINCOLN, NE</u> |
| 3. _____ | _____ |
| 4. _____ | _____ |
| 5. _____ | _____ |
| 6. _____ | _____ |
| 7. _____ | _____ |
| 8. _____ | _____ |
| 9. _____ | _____ |
| 10. _____ | _____ |
| 11. _____ | _____ |
| 12. _____ | _____ |
| 13. _____ | _____ |
| 14. _____ | _____ |
| 15. _____ | _____ |

INFORMATION SHEET

This information sheet should be completed by each primary petitioner. The attached "Petition to Vacate with Release and Waiver of Rights and Title and Quit Claim to County of Lancaster, Nebraska" should also be completed according to the instruction contained in the Instruction Sheet.

1. Petitioner's Name Donald W. Spilker
2. Petitioner's Address 1201 Fletcher Ave. Lincoln NE 68521
3. Petitioner's Telephone Number Home: 402-477-0387 Cel: 402-430-0706
4. Street/Alley/Public Way sought to be vacated 30 ft. strip laying entirely on the West side of Lot 26

5. Why are you seeking to have this street/alley/public way vacated?

Need the additional ground to meet set-back requirements to add on th the West side of my existing steel building located on the West side of Lot 26

6. What use(s) do you propose to make of the public way if vacated?

All ground will fit into my agriculture use as Christmas tree production.
meeting set-back requirement for building enlargement

I (WE) DO INTEND TO PURCHASE (describe area intended to be purchased)

Full 30 ft. width of ground along the West side of Lot 26 approx 1101 ft. long
(approx 3/4 Acre)

OF THE VACATED PUBLIC WAY WHICH ABUTS THE PROPERTY OWNED BY ME (US) AS DESCRIBED IN THE PETITION TO VACATE PUBLIC ROAD.

X YES NO

Prior to the public hearing the property will be appraised. The purchase price of the portion you intend to buy must be deposited with the County Clerk before receiving a deed to said property or the property will be sold to any other party willing to pay the purchase price. The vacation resolution will not become final until the full price of the entire public road proposed to be vacated has been paid.

BE SURE THAT THE PETITION TO VACATE PUBLIC WAY HAS BEEN COMPLETED AND IS ATTACHED TO THE INFORMATION SHEET.

PETITION TO VACATE PUBLIC ROAD
WITH RELEASE AND WAIVER OF RIGHTS
AND TITLE AND QUIT CLAIM TO COUNTY
OF LANCASTER, NEBRASKA

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*

(For Register of Deeds Use Only)

TO THE COUNTY BOARD OF THE COUNTY OF LANCASTER, NEBRASKA

The undersigned property owner(s) hereby ask and petition you to vacate the following described street/alley/public road, to-wit:

30 ft. wide by approx 1101 ft. long running totally along the West side of Lot 26
owned by Donald W. Spilker

in the County of Lancaster, Nebraska, to reserve and retain in said street, alley, or other public way such title, rights, easements and privileges as it may deem necessary. In consideration of the vacation of the above described street, alley or other public road, we, and each of us, for ourselves, our heirs, administrators, successors, and assigns, hereby waive and release any and all claims, causes of action, title, rights and demands of every nature, known or unknown, which may accrue to us, or which we now have, or which we may hereafter have as a result of or resulting from such vacation of said street, alley, or other public way; and hereby remise and forever quit claim unto the County of Lancaster, Nebraska and to its successors and assigns forever, all right, title, interest, estate, claim and demand, both at law and in equity, of, in and to all of said street, alley or other public way, together with all and singular there hereditaments thereunto belonging.

TO HAVE AND TO HOLD the above described street, alley or other public way unto the County Lancaster, Nebraska and to its successors and assigns, so that none of the undersigned, nor any person in his, her, their or its name(s) or behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof, but they and every one of them shall by these presents be excluded and forever barred.

The undersigned hereby represent(s) that he, she, they or it is (are) the owner(s) of the following described property in Lancaster County, Nebraska, abutting on said street, alley or other public way, to-wit:

Lot 26 NE Ex N40' for road 2-10-6

Dated this 1 day of May, 2001.

Donald W. Spilker

State of Nebraska)
Lancaster County) ss

Before me, a notary public qualified for said county, personally came _____

Donald W. Spilker

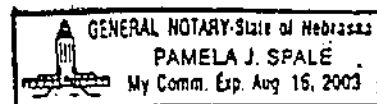
known to be the identical person(s) who signed the foregoing instrument, and acknowledged the execution thereof to be his, her or their voluntary act and deed for the purposes therein set forth, and acknowledged that he, she or they signed the foregoing instrument with the view of having said County of Lancaster vacate said street, alley or other public road and the County of Lancaster reserving and retaining in said street, alley or other public road such title, rights and privileges as it may deem necessary, together with a waiver and release of any and all claims, causes of action, title, rights, demands and quitclaim.

WITNESS my hand and notarial seal on May 1st, 2001.

Pamela J. Spale

Notary Public

My commission expires: Aug 16, 2003



N 1/2 SEC. 2 T10N - R. 1E

IST
ADD

SEP 22 1997

Fletcher AVE.

REM. PORT.

REM. PORT.

REM. PORT.

LOT 26 I.T.

LOT 25 I.T.

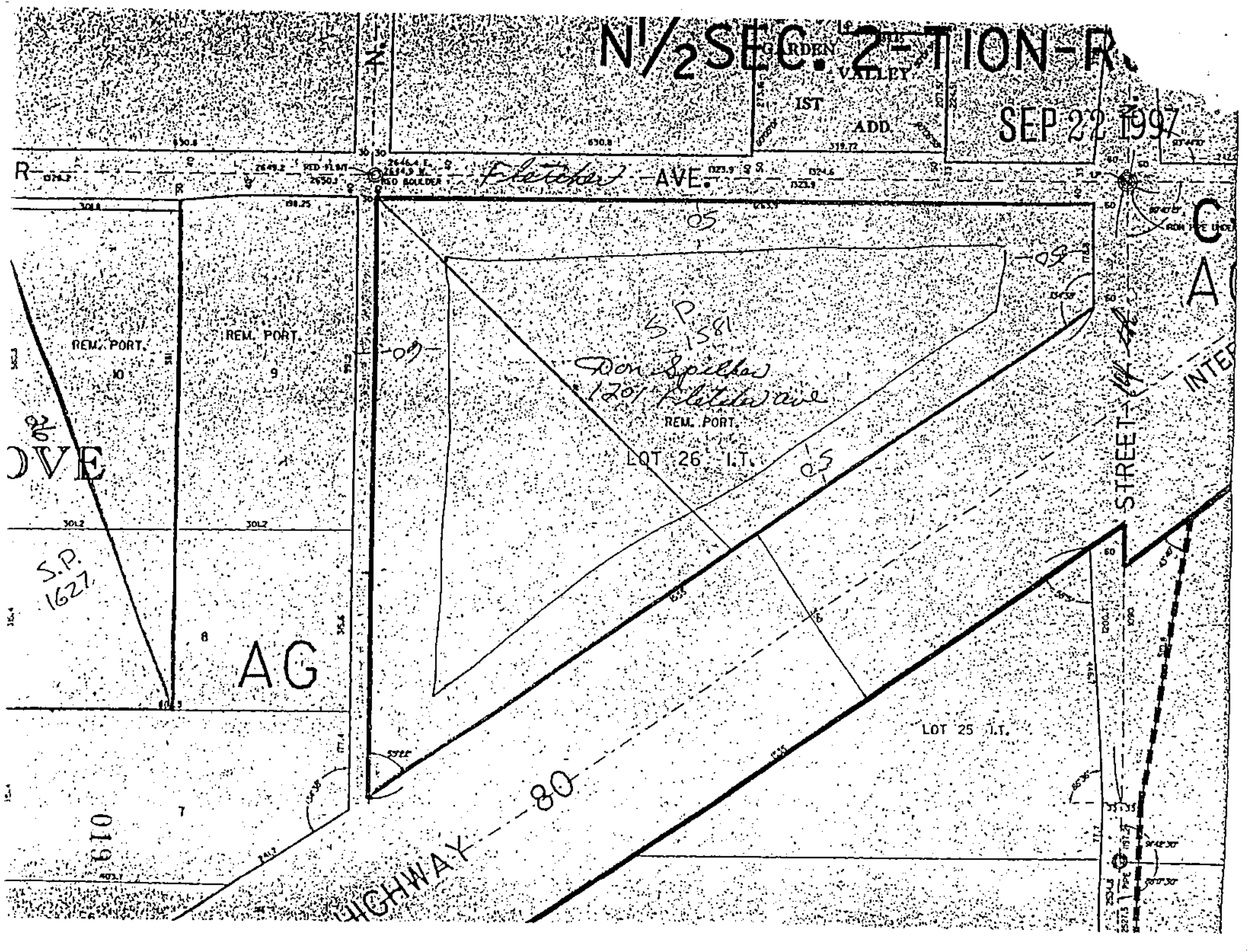
AG

S.P.
1627

HIGHWAY 80

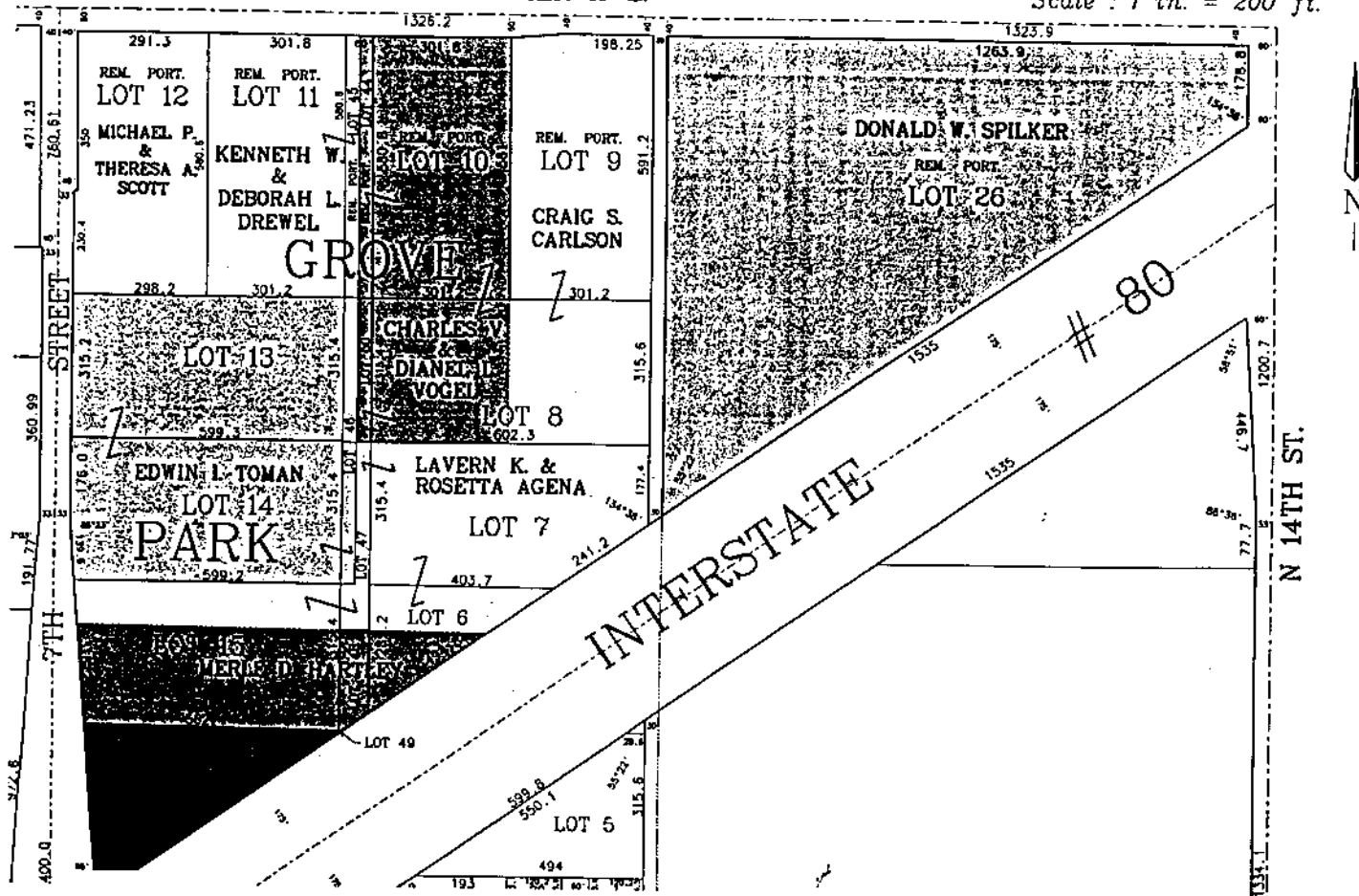
STREET

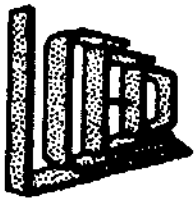
INTER



FLETCHER AVE.

Scale : 1 in. = 200 ft.





Lancaster


County

Engineering

Department

DON R. THOMAS - COUNTY ENGINEER

DEPUTY - LARRY V. WORRELL
COUNTY SURVEYOR

DATE: May 30, 2001
TO: Lancaster County
Board of Commissioners
FROM: Larry V. Worrell 
County Surveyor
SUBJECT: RESOLUTION 01-33 - VACATION OF A HALF STREET
DESIGNATED AS NORTH 11TH STREET
BETWEEN INTERSTATE 80 AND FLETCHER AVENUE

In review, this office finds this half street (30.0' right-of-way) was dedicated as a part of "Grove Park Addition" in 1887. This street, to the best of our knowledge, was not opened for the use of the general public.

For your information, "North 9th Street", to the west of this requested location, was vacated a number of years ago.

This office has no immediate plans, nor any long range plans, that would include the need to utilize the 30.0' right-of-way that was dedicated.

Therefore, this office would recommend approval of the vacation request subject to retaining a blanket easement for utilities.

This office would further recommend that disposal of this parcel, be no less than as a whole or as directed by the Lancaster County Board of Commissioners.

Value, if any, is unknown at this time. A follow-up letter will be forthcoming pertaining to any value.

cc: Mike DeKalb
Planning Department

LVW/cm
WP51/VACATION/North 11th StreetMem

Post-It® Fax Note 7671		Date 5-30	# of pages 1
To Mike DeK	From Larry W	Co.	
Co./Depl.		Phone #	
Phone #		Fax #	

021